DISTRIBUTED
JAN 13 1986

Supreme Court, U.S.
FILED
JAN 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-756

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

DORIS ADAMS,

Petitioner,

V.

GRAINGER W. McILHANY,

Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JIM MATTOX
Attorney General of Texas

MARY F. KELLER
Executive Assistant

J. PATRICK WISEMAN
Chief, State & County Division
P.O. Box 12548
Austin, Texas 78711
(512) 463-2120

Attorneys for Respondent

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state judge with general jurisdiction and a broad power to punish for contempt, having issued the petitioner a show cause order and ultimately citing petitioner for contempt, is immune from §1983 damages liability?

2. Whether petitioner has standing to seek injunctive and declaratory relief when the claim is for nothing other than a past injury which has no immediate or realistic chance of recurring so as to satisfy the case or controversy requirement of Article III?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. THE COURT OF APPEALS CORRECTLY RULED THAT JUDGE McILHANY DID NOT ACT IN THE CLEAR ABSENCE OF JURISDICTION 5

A. Judge McIhany Possessed Sufficient Jurisdiction To Invoke The Immunity Defense 5

1. *Subject-matter jurisdiction is sufficient for immunity purposes* 6

B. The Facts Clearly Show That Judge McIhany Engaged In Only Judicial Acts 7

II. THE COURT OF APPEALS CORRECTLY RULED THAT PETITIONER LACKED STANDING TO SEEK EITHER INJUNCTIVE OR DECLARATORY RELIEF 8

CONCLUSION 11

APPENDIX A-1

Letter of February 3, 1984, from the State Commission on Judicial Conduct to Doris Adams . A-1

TABLE OF AUTHORITIES

CASES **Page**

Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872) 5,6

City of Los Angeles v. Lyons, 461 U.S. 95 (1983) .. 8,9,10

Cooke v. United States, 267 U.S. 517 (1925) 7

Dennis v. Sparks, 449 U.S. 24 (1980) 5

DeFunis v. Odegaard, 416 U.S. 312 (1973) 10

Dykes v. A.J. Hosemann, 743 F.2d 1488 (11th Cir. 1984) 7

Elliott v. Perez, 751 F.2d 1472 (5th Cir. 1985) 9

Ex Parte Duncan, 127 Tex. 507, 95 S.W.2d 675 (1936) 10

Golden v. Zwickler, 394 U.S. 103 (1969) 11

Green v. Maraio, 722 F.2d 1013 (2nd Cir. 1983) 7

Huffman v. Pursue, 420 U.S. 592 (1975) 10

Iron Arow Society v. Heckler, 464 U.S. 67 (1983) 10

Judice v. Vail, 430 U.S. 327 (1977) 8

McAlester v. Brown, 469 F.2d 1280 (5th Cir. 1972) 10

O'Shea v. Littleton, 414 U.S. 488 (1974) 8,10,11

Pulliam v. Allen, 466 U.S. 522 (1984) 9,10

Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980) 7

Reed v. Terrell, 759 F.2d 472 (5th Cir. 1985) 10

Stump v. Sparkman, 435 U.S. 349 (1978) 5,6,8

TABLE OF AUTHORITIES, *continued*

Page

Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719 (1980) 5

United States v. West Virginia, 295 U.S. 463 1935) 11

STATUTES

Federal:
42 U.S.C. §1983 2,5,8

State:
TEX. REV. CIV. STAT. ANN. art. 1909 (Vernon 1964) 2,6
TEX. REV. CIV. STAT. ANN. art. 1911a, §1 (Vernon Supp. 1985) 2,6,7

CONSTITUTION

U.S. CONST. art. III 2,8,9,11

NO. 85-756

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

DORIS ADAMS,

Petitioner,

V.

GRAINGER W. McILHANY,

Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

COMES NOW Respondent, Judge Grainger W. McIlhany, represented by and through the Attorney General of Texas and files this Brief in Opposition to the Petition for Writ of Certiorari, and in support thereof would respectfully show the following:

OPINIONS BELOW

The judgment sought to be reviewed was entered by the United States Court of Appeals for the Fifth Circuit on June 27, 1985, and is reported at 764 F.2d 294. (Reprinted in Petitioner's Brief at Appendix A). The Petition on Suggestion for Rehearing En Banc was denied August 2, 1985. (Reprinted in Petitioner's Brief at Appendix D).

The decision of the district court is reported at 593 F.Supp. 1025 (N.D. Tex. 1984). (Reprinted in Petitioner's Brief at Appendix B.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Article III, §2, cl. 1:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority, —to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a Party; —to Controversies between two or more States; —between a State and Citizens of another State; —between citizens of different States; —between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

42 U.S.C. §1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

TEX. REV. CIV. STAT. ANN. art. 1909 (Vernon 1964):

> Such court shall have general original jurisdiction over all causes of action, for which a remedy or jurisdiction is not provided by law or the constitution, and such other jurisdiction, original and appellate as may be provided by law.

TEX. REV. CIV. STAT. ANN. art. 1911a, §1 (Vernon Supp. 1985):

> A court possesses inherently all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction. It has the duty to require that proceedings shall be conducted with dignity and in an orderly and expeditious manner and to so control the proceedings that justice is done. A court has the power to punish for contempt.

STATEMENT OF THE CASE

Petitioner, Doris Adams, brought suit under 42 U.S.C. §1983 against Respondent, Judge Grainger W. McIlhany, of the 31st Judicial District of Texas based on the following:

Beginning in May of 1983, Judge McIlhany received letters from Doris Adams (R.50-52) concerning her three sons, all of whom had cases pending before him (R.66-77). On June 10, 1983, he made a brief reply to Mrs. Adams (R. 53). Mrs. Adams responded on June 14, 1983, stating in part: "The only way you can win with the law any more is if you can buy your way out & its done every day. You know I can't pay so you stick my boys good." [Reply of June 14, 1983, set forth in full in District Court's opinion, 593 F.Supp. 1025 (N.D. Tex. 1984) (R 176-177)].

On October 5, 1968, Judge McIlhany had Mrs. Adams served with an order directing her to appear before the court on October 7, 1983, to show cause as to why she should not be held in contempt because of the language in the June 14 letter (R.100-102). She appeared before Judge McIlhany and after a hearing was found in contempt an ordered to spend 30 days in jail (R.102). No appeal from the order of contempt was taken.

Mrs. Adams brought a §1983 action against Judge McIlhany in federal court, and Judge McIlhany responded with a Motion to Dismiss based upon judicial immunity (R.41-43).

On March 16, 1984, the trial court ordered the motion treated as one for summary judgment (R.56). No discovery was attempted or initiated during this time period. Mrs. Adams did present

an argument for completing discovery to the trial court in her response of April 16, 1984, (R.87), but no motion regarding discovery was submitted as allowed by Rule 30, FED.R.CIV.P. and Rule 5.1, Local Rules of Practice for the Northern Dist ict of Texas.

No discovery was attempted in the case until July 1984 (R.154-159). On motion of Judge McIlhany (R.163-165), discovery was then stayed pending the trial court's ruling on the Motion for Summary Judgment (R.174). On September 7, 1984, in an order accompained by a written opinion (R.175-190), the trial court granted the Motion for Summary Judgment and dismissed the lawsuit.

The case was appealed to the Court of Appeals for the Fifth Circuit and the court affirmed the trial court's grant of summary judgment.

SUMMARY OF ARGUMENT

Judge McIlhany is absolutely immune from monetary liability under 42 U.S.C. §1983. At all relevant times he presided over a court of general jurisdiction and was authorized by statute to punish for contempt. Therefore, he acted within his lawful scope of jurisdiction when he issued Mrs. Adams a show cause Order and cited her for contempt. His actions were clearly judicial acts, and any procedural defects in the contempt proceeding did not operate to destroy the judge's jurisdiction. Consequently, Judge McIlhany did not act in the clear absence of jurisdiction.

Furthermore, Judge McIlhany cannot be sued for injunctive or declaratory relief. Mrs. Adams lacks standing to bring and maintain suit for equitable relief, because she presents a case or controversy that is conjectural and hypothetical.

In light of the above, the Judgement of the Court of Appeals for the Fifth Circuit should be affirmed.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY RULED THAT JUDGE McILHANY DID NOT ACT IN THE CLEAR ABSENCE OF JURISDICTION.

In *Stump v. Sparkman*, 435 U.S. 349 (1978), this Court declared that state judges are *absolutely immune* from 42 U.S.C. §1983 liability for judicial acts not taken "in the clear absence of all jurisdiction." 435 U.S. at 357. The doctrine of judicial immunity has been an established principle of American jurisprudence since *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1872), ("[I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer, in executing the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.") Thus, a judge defending against a §1983 action is entitled to absolute judicial immunity from monetary liability for acts performed in his judicial capacity. *See, Dennis v. Sparks*, 449 U.S. 24, 27 (1980); and *Supreme Court of Virginia v. Consumers Union of the United States, Inc.* 446, U.S. 719, 734-35 (1980).

A. Judge McIlhany Possessed Sufficient Jurisdiction To Invoke The Immunity Defense.

The Court of Appeals correctly determined that Judge McIlhany possessed sufficient jurisdiction for his judicial immunity to attach to his acts in issuing a "show cause" order against Petitioner, and finding Petitioner in contempt. The scope of a judge's jurisdiction in judicial immunity cases must be construed broadly, *Stump v. Sparkman*, 435 U.S. at 356.

Judicial acts done in "excess" of jurisdiction have been distinguished by this Court from those done in the absence of jurisdiction. For example, as this Court has noted, if a probate judge should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability; however, if a jduge of a criminal court should convict a defendant of a non-existent crime, he would merely be acting in excess of jurisdiction and would be immune, *Bradley v. Fisher*,

80 U.S. (13 Wall.) at 352. Therefore, jurisdiction for immunity purposes is exceptionally liberal.

There is no question in the present case that Judge McIlhany acted within his lawful jurisdiction in issuing a show cause order against Petitioner, and finding Petitioner in contempt. Judge McIlhany presided over a court of general jurisdiction, which empowered him to punish for contempt. *See* TEX. REV. CIV. STAT. ANN. art. 1909 (Vernon 1964) (district courts in Texas are courts of general jurisdiction); *see also* TEX. REV. CIV. STAT. ANN. art. 1911a, §1 (Vernon Supp. 1985) (district courts in Texas possess the power to punish for contempt). Consequently, the "clear absence of jurisdiction" test of *Stump v. Sparkman, supra,* is inapplicable to the instant case.

Petitioner erroneously argues that Judge McIlhany lacked jurisdiction because he failed to observe due process requirements for contempt proceedings. However, this Court has long established that the failure to comply with even elementary principles of due process will *not* deprive a judge of jurisdiction. *Stump v. Sparkman,* 435 U.S. at 359 ("A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.") This Court further held that "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority..." 435 U.S. at 356.

The contempt cases cited by Petitioner are distinguishable on two grounds. First, they are *due process* cases and not judicial immunity cases. Second, the Texas cases cited are all habeas corpus cases, wherein the petitioner collaterally attacks orders of contempt. These differences are significant because the meaning of the term "jurisdiction" in procedural due process and habeas corpus cases is not applicable to immunity cases. *See Stump v. Sparkman,* 435 U.S. at 356.

1. *Subject-matter jurisdiction is sufficient for immunity purposes.*

While conceding the possibility of subject-matter jurisdiction in the instant case, Petitioner nevertheless argues that

Judge McIlhany lacked *personal* jurisdiction over the Petitioner. (Petitioner's Brief at 19). However, there is nothing that would limit a judge's power of contempt to actual parties. Article 1911a §1, TEX.REV.CIV.STAT., broadly grants judges the power to punish for contempt. Thus, the power extends to attorneys, witnesses, and, in this case, relatives of parties, such as the Petitioner.

The actions which prompted the contempt citation arose out of a case pending before the judge. This Court has stated: "[T]he power of contempt which a judge must have and exercise in protecting the jude and orderly administration of justice, and in maintaining the authority and dignity of the court, is most important and indispensible." *Cooke v. United States*, 267 U.S. 517, 539 (1925). Therefore, Judge McIlhany had personal jurisdiction over the Petitioner who approached him about official business before his court.

Petitioner notes that the circuit courts are split on the issue of whether personal jurisdiction is necessary to invoke the doctrine of judicial immunity. In *Green v. Maraio*, 722 F.2d 1013 (2nd Cir. 1983), the Court of Appeals for the Second Circuit held that a judge who possesses subject-matter jurisdiction is not within the "clear absence of all jurisdiction" posture which would deprive him of judicial immunity. In other words, where a court has *some* subject-matter jurisdiction, there is sufficient jurisdiction for immunity purposes.

The two cases which have held that personal jurisdiction must exist in addition to subject-matter jurisdiction both present unusual facts. In *Rankin v. Howard*, 633 F.2d 844 (9th Cir. 1980) and *Dykes v. A.J. Hosemann*, 743 F.2d 1488 (11th Cir. 1984), the judges issued *ex parte* orders against out-of-state residents. In the instant case, the order of contempt was issued against a Texas resident and she had both notice and an opportunity to be heard. Thus, even *Rankin* or *Dykes* would not support a denial of immunity based upon the facts found in the cause *sub judice*.

B. The Facts Clearly Show That Judge McIlhany Engaged In Only Judicial Acts.

The immunity from §1983 damages liability protects judges against liability for all "judicial acts." Judge McIlhany's actions in this case were clearly judicial acts when evaluated by the criteria set forth in *Stump v. Sparkman, supra:*

> [W]hether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.

435 U.S. at 362

The Court of Appeals correctly held that Judge McIlhany's "show cause" order to appear in court and the order of contempt were both acts normally performed by a judge. Moreover, the Petitioner clearly dealt with the judge in his judicial capacity. Her letters were addressed to him as judge, and the topic was her sons and the judge's treatment of them.

II. THE COURT OF APPEALS CORRECTLY RULED THAT PETITIONER LACKED STANDING TO SEEK INJUNCTIVE OR DECLARATORY RELIEF.

Petitioner seeks, in the instant case, not only damages pursuant to §1983, but also injunctive and declaratory relief. Judicial immunity clearly bars the damages claim. Likewise, the claims for injunctive and declaratory relief are barred because the Peitioner lacks standing to either bring or maintain suit.

Standing is essential to satisfy the threshold requirement imposed by Article III of the United States Constitution, that those who seek to invoke the power of federal courts must allege an actual case or controversy. *Juidice v. Vail,* 430 U.S. 327, 331 (1977); *O'Shea v. Littleton,* 414 U.S. 488, 493 (1974). This Court expounded upon the standing requirement in *City of Los Angeles v. Lyons,* 461 U.S. 95, 103 S.Ct. 1660 (1983):

> Plaintiffs must demonstrate a 'personal stake in the outcome' in order to 'assure that concrete adverseness which sharpens the presentation of issues' necessary

> for the proper resolution of constitutional questions. Abstract injury is not enough. The plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and *the injury or threat of injury must be both 'real and immediate', not 'conjectural' or 'hypothetical'.*

Id. 103 S.Ct. at 1665 (citation omitted) (emphasis added).

Petitioner has not shown sufficient immediacy and reality of future injury to warrant federal court jurisdiction. Petitioner's allegations are that a judge acted injudiciously toward her under a particular set of facts. No evidence indicates any risk of such conduct being repeated; indeed, Petitioner's own summary judgment evidence indicates just the opposite. The letter of February 3, 1984, from the State Commission on Judicial Conduct indicates "appropriate action" has been taken to lead the Commission to expect that there will "be no repetition of a similar incident in the future." [(R. 93.);Reprinted in Appendix A].

Petitioner argues that she has *alleged* a threat of likely future harm and that the allegation itself is sufficient for standing purposes. (Petitioner's Brief at 26). However, as a matter of policy, general charges against a judge without any specific allegations of facts are insufficient to bring and maintain suit. *See e.g., Elliott v. Perez,* 751 F.2d 1472, 1479 n.20 (5th Cir. 1985) (More than conclusory allegations are necessary to state a claim). The federal court system depends upon the Article III case or controversy requirement to prevent the harassment of judges resulting from unsupported claims. *See Pulliam v. Allen,* 466 U.S. 522, 104 S.Ct. 1970, 1979 n.18 (1984). Moreover, claimants should not be permitted to engage in fishing expeditions via discovery in order to create a justifiable claim. *See e.g., Elliott v. Perez,* 751 F.2d at 1479 (Liberal use of discovery is at odds with the immunity doctrine which seeks to free governmental officials from the burden, stress and anxiety of pre-trial preparation.)

Petitioner further argues that she has already suffered an actual injury and that her past injury is sufficient for standing

purposes. (Petitioner's Brief at 25). However, this Court held in *O'Shea v. Littleton, supra,* that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy..." 414 U.S. at 493; *see also City of Los Angeles v. Lyons,* 103 S.Ct. at 1665. Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to *actual* cases or controvesies which exist up to the date of certiorari review. *Iron Arrow Honor Society v. Heckler,* 464 U.S. 67, 71 (1983) (*per curiam*); *see also DeFunis v. Odegaard,* 416 U.S. 312, 316 (1973).

Nor has Petitioner shown a practice or custom of illegal conduct that would confer standing as was found by this Court in *Pulliam v. Allen, supra.* Rather, Petitioner's incident with Judge McIlhany was an isolated one. According to *O'Shea v. Littleton,* the law will not assume that Petitioner's sons will again be faced with criminal charges. Nor is it likely that Petitioner herself will again be cited for contempt. 414 U.S. at 497; *City of Los Angeles v. Lyons,* 103 S.Ct. at 1665.

Finally, even if Petitioner could establish standing, she nevertheless failed to state a sound basis for either injunctive or declaratory equitable relief. In *City of Los Angeles v. Lyons,* this Court noted the general rule of federal equitable restraint in the issuance of injunctions against state officers engaged in the administration of the states' laws. 103 S.Ct. at 1670; *see also Huffman v. Pursue,* 420 U.S. 592, 603 (1975); *O'Shea v. Littleton,* 414 U.S. at 499.

Further, the Petitioner failed to establish the basic requisites for equitable relief — the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law. *O'Shea v. Littleton,* 414 U.S. at 502. Petitioner cannot show any serious risk of irreparable harm. In the unlikely event that such action is repeated, Petitioner has an adequate legal remedy under state law. Judicial impropriety may be attacked and appealed from either directly [e.g., appeal, certiorari, quo warranto or writ of error] or collaterally [e.g., habeas corpus, *see Ex Parte Duncan,* 127 Tex. 507, 95 S.W. 2d 675, 679, (1936); *McAlester v. Brown,* 469 F. 2d 1280, 1283 (5th Cir. 1972)] or through the State Commission on Judicial Conduct as was done here [*See* Appendix A].

Federal court jurisdiction should never be invoked to collaterally attack state-court judgments by merely casting a complaint in the form of a civil rights action; rather, state-court judgments should be directly attacked in state courts. *Reed v. Terrell*, 759 F.2d 472 (5th Cir. 1985).

As to the availability of declaratory relief, such relief requires an actual controversy in recognition of the case or controversy limitations in Article III of the Constitution. *O'Shea v. Littleton*, 414 U.S. at 499 (The considerations for determining the existence of a case or controversy for standing purposes shade into those determining whether the complaint states a basis for equitable relief.); *see also United States v. West Virginia*, 295 U.S. 463, 475 (1935); *Golden v. Zwickler*, 394 U.S. 103, 108-09 (1969). Furthermore, the same principles which serve to defeat injunctive relief — i.e. the absence of irreparable injury, which is both great and immediate, and the adequacy of remedies at law — equally apply to declaratory relief. Therefore, the Court of Appeals correctly determined that declaratory relief is not available in the instant case.

CONCLUSION

For the foregoing reasons, as well as the reasons contained in the opinion rendered by the Court of Appeals for the Fifth Circuit, Judge McIlhany is immune from 42 U.S.C. §1983 damages liability. He is also free from suit for injunctive and declaratory relief because the Petitioner lacks standing. Therefore, Respondent requests that Petitioner's application in all things be denied.

Respectfully submitted,

JIM MATTOX
Attorney General of Texas

MARY F. KELLER
Executive Assistant Attorney
General for Litigation

J. PATRICK WISEMAN
Chief, State & County Division
P.O. Box 12548
Austin, Texas 78711
(512) 463-2120

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Brief of Respondent has been sent by U.S. Mail, Certified, Return Receipt Requested, to:

James C. Harrington
American Civil Liberties Foundation of Texas, Inc.
600 West Seventh Stree
Austin, Texas 78701

Broadus A. Spivey and
Paul Knisely
SPIVEY, GRIGG, KELLY & KNISELY
812 W. 11th Street
Austin, Texas 78701

on this the _____ day of _____, 198____.

_____
J. Patrick Wiseman

**State Commission
on Judicial Conduct**

February 3, 1984

Mrs. Doris Adams
P.O. Box 84
Miami, Texas 79059

Dear Mrs. Adams:

This letter is in reference to the complaint you filed with this office concerning the incident in which the district judge sentenced you to thirty days confinement for contempt on the basis of a private letter written to the judge.

In the disposition of the matter, after thorough review and discussion, the Commission undertook what it considered to be appropriate action, the nature of which we are constitutionally and statutorily prohibited from disclosing. What happened to you was truly unfortunate, and it is our hope and expectation that there be no repetition of a similiar incident in the future.

Yours truly,

/s/ Robert Flowers

RF:tuh

(R. 93; Pl. Ex. 2)